HOUSE BILL 268

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY
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AN ACT

RELATING TO WORKERS' COMPENSATION; CREATING A PRESUMPTION THAT CORONAVIRUS DISEASE 2019 IS AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT FOR ESSENTIAL EMPLOYEES; PERMITTING EMPLOYERS TO REBUT THAT PRESUMPTION; PROHIBITING WORKERS' COMPENSATION INSURERS FROM USING CORONAVIRUS DISEASE 2019 CLAIMS IN DEVELOPING RATING PLANS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 52-1-19 NMSA 1978 (being Laws 1975, Chapter 284, Section 6, as amended) is amended to read:

"52-1-19. INJURY BY ACCIDENT--COURSE OF EMPLOYMENT--CORONAVIRUS DISEASE 2019--PRESUMPTION.--

A. As used in the Workers' Compensation Act, unless the context otherwise requires, "injury by accident arising out of and in the course of employment" shall:

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(1) include:

(a) accidental injuries to workers and death resulting from accidental injury as a result of their employment and while at work in any place where their employer's business requires their presence; [but shall] and

(b) the contraction of coronavirus disease 2019 caused by the novel coronavirus by any essential employee from the effective date of this 2021 act until January 31, 2023; and

(2) not include injuries to any worker occurring while on [his] the worker's way to assume the duties of [his] the worker's employment or after leaving such duties, the proximate cause of which is not the employer's negligence.

B. If an essential employee is diagnosed with coronavirus disease 2019 caused by the novel coronavirus, and the essential employee has established that the employer has not strictly complied with the then existent public health orders related to the coronavirus disease 2019, the condition is presumed to be:

(1) an accidental injury arising out of and in the course of employment;

(2) reasonably incident to and proximately caused by employment; and

(3) a disability that is a natural and direct result of the accident.
C. The presumptions created in Subsection B of this section may be rebutted by a preponderance of evidence in a court of competent jurisdiction establishing that the employee engaged in conduct or activities outside of employment that substantially violated the then existent public health orders related to the coronavirus disease 2019.

D. As used in this section, "essential employee" mean any public safety employee or school employee or an employee declared to be an essential employee pursuant to a public health order of the governor or the secretary of health; provided that the employee was required to work at the physical location of employment at any time, up to twenty days prior to the diagnosis of coronavirus disease 2019."

SECTION 2. Section 59A-17-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 304, as amended) is amended to read:

"59A-17-8. MAKING OF RATES--WORKERS' COMPENSATION--RATE CALCULATIONS--RATE CLASSIFICATIONS.--

A. A workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the superintendent by an advisory organization designated by the superintendent.

B. A workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by the advisory organization designated by the superintendent.
C. Workers' compensation premium rates shall be equalized and calculated on a basis that does not discriminate against or penalize employers who pay higher wages than other employers to workers in the same job classification. The legislature finds that calculating workers' compensation premium rates strictly on the basis of an employer's wages paid discriminates against and penalizes higher-paying employers. The legislature accordingly directs that the superintendent shall:

(1) investigate alternatives to the current method of computing workers' compensation premiums, including but not limited to:

(a) split classification;
(b) payroll cap;
(c) hours worked; and
(d) premium credits;

(2) immediately conduct hearings on the issue, including consideration of other alternatives; and

(3) adopt regulations, to become effective no later than April 1, 1991, to equalize the workers' compensation premium rates employers must pay for workers who perform the same job. Nothing in this subsection shall be construed to prohibit the use of experience rating or scheduled credits.

D. A workers' compensation insurer may develop subclassifications of the uniform classification system upon

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which rates may be made. Such subclassifications and their
filing shall be subject to all applicable provisions of the
Insurance Rate Regulation Law. Data produced from such
subclassifications shall be reported in accordance with the
statistical plans, uniform classification system and experience
rating system in use by the advisory organization designated by
the superintendent.

E. Classification assignments may be changed within
sixty days of the effective date or renewal date of the policy;
provided that the employer is given reasonable prior notice of
the proposed change in order to object; and provided further
that the change is based upon an appropriate audit or
investigation. The same provisions apply to initial
classification assignments for new operations added by the
employer so that they may be changed within sixty days of the
date the classification assignments are initially established.
No subsequent changes shall be made unless the insurer proves,
after conducting an audit or investigation, that:

(1) there has been a substantial change in the
nature of the work performed; or

(2) the initial assignment was in error due to
withheld or inaccurate material information provided by the
employer.

F. A workers' compensation insurer may develop
rating plans that identify loss experience as a factor to be
used. The rating plans and their filing shall be subject to all applicable provisions of the Insurance Rate Regulation Law.

G. The superintendent shall disapprove subclassifications, rating plans or other variations from supplementary rate information filed by a workers' compensation insurer if the insurer:

(1) fails to demonstrate that the data produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization designated by the superintendent; or

(2) uses any data related to claims arising from coronavirus disease 2019 for which an injury by accident arising out of and in the course of employment is presumed pursuant to Section 52-1-19 NMSA 1978 in developing a rating plan."

SECTION 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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